IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.353 OF 2001

Balu Ganpat Koli ..Appellant
R/o. Ghongade Wasti,
Bhavani Peth,
Solapur.
V/s.
The State of Maharashtra ..Respondent.

Shri R.S.Kate h/for Shri V.V.Purwant for the Appellants.
Shri Pradeep S. Hingorani, A.P.P., for the State.

**CORAM: S.B.MHASE AND**
**S.R.SATHE, JJ.**
**DATE : 13th, June, 2005.**

**ORAL JUDGMENT:** (Per S.B.Mhase, J.)

1. This appeal is direted against the judgment and order of conviction passed by the IInd Additional Sessions Judge, Kolhapur in the Sessions case no.81/2000 wherein the Accused/Appellant was convicted for the

offence punishable under sections 302 and 342 of the Indian Penal Code and sentenced to undergo life imprisonment and to pay a fine of Rs.1,000/-, in default to suffer rigorous imprisonment for three months for the offence punishable under section 302 of the Indian Penal Code. No separate conviction or sentence for the offence punishable under section 342 of the Indian Penal Code is passed.

2. The deceased Yamunabai was a wife of the Accused/Appellant- Balu Ganpat Koli who was her second husband. The deceased was wife of Yashwant Koli who was her first husband and the said Yashwant Koli is dead. From the said Yashwant Koli, the deceased is having two sons and one daughter. The daughter is married. Son Somnath was residing with the deceased and Accused/Appellant- Balu Koli. The other son, Nagesh is residing at Aundhi. The deceased was residing alongwith her son Somnath and with the Accused/Appellant-Balu Ganpat Koli as his wife.

3. Some 15 days prior to the incident,

the Accused/Appellant Balu Ganpat Koli had asked Somnath to get some grocery articles from the shop which he refused. Therefore, there was quarrel between the Accused Balu Ganpat Koli and Somnath. On the date of incident, that is, 24/2/2000, the dispute was going on between the Accused Balu Ganpat Koli and the son of the deceased, Somnath. At about 11.00 a.m., the accused Balu rushed towards the Somnath with a view to assault him. However, the deceased sent her son Somnath out of the house. Since then there was a dispute between the deceased and the Accused/Appellant-Balu Ganpat Koli. At about 12.30 p.m., the deceased and the accused no.1-Balu Ganpat Koli were in the house, quarreling on the ground that the deceased is tutoring, instigating and teaching Somnath to assault the Accused. And therefore, he abused her and locked the door from inside. The Accused poured kerosene from the stove on her body and set her on fire. Thereafter, he unlocked the door and ran away. The neighbours after hearing the voice of the deceased extinguished the fire. She was admitted in the hospital. She had sustained

46% of the burn injuries. She expired on 1st March, 2000 due to the shock and Toxaenia caused by 46% burns.

4. In order to prove the offence, the prosecution has examined in all 10 witnesses. Out of the ten witnesses, P.W.1 Lahu Koli is the brother of the deceased, P.W.1 has not supported the case of the prosecution.

5. After the death of the deceased, P.W.8-Doctor Pradip Chhanchure carried out autopsy and the Autopsy Report is at Exhibit 36.The cause of death given by the Doctor is a shock and toxaenia caused due to 46% burn injuries.The Doctor has opined that these injuries were sufficient to cause the death of the person in an ordinary course. The clothes of the deceased were sent to Chemical Analyser and the C.A.Report ,(Exhibit 54) shows that there were remnants of kerosene on the clothes of the deceased. It is equally revealed from the report that the clothes of the accused were smelling of kerosene. And therefore, the only inference follows is that, the death is not a natural one.

6. The points as to whether the death is homicidal and as to who is responsible for these injuries, will be answered together.

7. After the incident at about 12.30 p.m. on 24/2/00, the deceased was admitted in the hospital at Solapur. Since it was medico-legal case, immediately P.S.I.Anil Gopal Mantri (P.W.10) recorded the statement of the deceased which is marked as Exhibit 47. As a result of the death of the deceased, the said Exhibit 47 is now treated as the Dying Declaration. However, the offence was registered by P.W.10-P.S.I.Anil Gopal Mantri on the basis of the said statement. And therefore, the said statement is equally an F.I.R. The said statement of the deceased was recorded by P.W.10-Anil Mantri in the presence of P.W.5 Dr.Yogesh Kokadkar. The recording of the said statement commenced at about 2.55 p.m. and it was completed by PSI Anil Mantri at 3.15 p.m. Dr. Yogesh who is examined as P.W.5 has stated and proved endorsement made by him on such statement. The endorsement categorically states that the patient/deceased

was conscious to give her statement and the second endorsement is very specific which states that the patient was conscious during the statement from 2.55 p.m. to 3.15 p.m. Nothing has transpired in the testimony of Dr.Yogesh to disbelieve him.

8. From the statement of the deceased, it is revealed that the deceased was married to one Yashwant and from the said Yashwant, she had two sons and one daughter. The daughter is married and that the elder son, Somnath is residing with the deceased alongwith the accused Balu. The other son of the deceased is residing at Aundhi. It is further revealed that 15 days prior to the incident , there was dispute between Somnath and the accused Balu, since Somnath refused to bring grocery articles from the shop. So far as the cause of the death is concerned, the deceased had stated that on the date of incident, her son Somnath, accused no.1-Balu and the deceased were in the house. Since morning, dispute was going on between Somnath and the accused no.1. At about 11.00 a.m., the Accused- Balu rushed towards Somnath to beat or assault him. At

that time, the deceased had sent her son Somnath out of the house and since then the dispute continued between the deceased and the accused no.1. The deceased had stated that at about 12.30 p.m. , the accused Balu picked up the quarrel with the deceased, contending that the deceased was taking the side of children and she was teaching them to assault the accused. And thererfore, he abused her and at that time, the accused latched the door from inside and poured kerosene from the stove on the person of the deceased and set her on fire by throwing burning match stick and thereafter, he ran away. On hearing the cry of the deceased, the neighbourers gathered and extinguished the fire and admitted her in the hospital.

9. From the testimony of the P.W.5 and P.W.10, nothing has been transpired to disbelieve these statements of the deceased. But in the present matter, we need not bother about the fact that the statement, Exhibit 47 is recorded by the police. And therefore, how far it is safe to accept it as a Dying Declaration because the police, immediately

after this statement which is F.I.R.- Cum-Dying Declaration, have recorded another dying declaration. The said dying declaration was recorded by P.W.6 Nayab Tehsildar Ashok Afjalpurkar. The said Dying Declaration is at Exhibit 30. The Dying Declaration, Exhibit 30 has been proved by P.W.6-Ashok Afjalpurkar and P.W.9 Doctor Anil Shinde. We have perused Exhibit 30 and Exhibit 47 and we have found that so far as the cause of death is concerned,it is consistent and one and the same. These Dying Declarations also made reference to the dispute on account of Somnath. After Somnath was sent out of the house, the deceased stated that the accused no.1-Balu picked up quarrel with her and poured kerosene from the stove on her person and set her on fire by throwing burning match stick. This Dying Declaration, Exhibit 30 was recorded in presence of P.W.9 Doctor Anil Shinde and he has made endorsement that the patient was conscious, oriented to give verbal statement. The second endorsement by the Doctor was that the patient was conscious, oriented throughout the statement. Dying Declaration, Exhibit 30 was recorded during

the period of 3.15 to 3.40 p.m. This Dying Declaration and the Dying Declaration, Exhibit 47 are one and the same and there is no variance so far as the cause of death of the deceased is concerned. The Post Mortem Report, Exhibit 36 also supports the said cause so far as the death of the deceased is concerned.

10. A feeble attempt has been made by the defence that at the time of recording of the Exhibit 47, relatives of the deceased were present. However, prosecution has pointed out that while recording of the statements of the deceased, her relatives were asked to go out of the room and the statement of the deceased was recorded when no relative of the deceased was present. The learned counsel for the Appellant submitted that Yamunabai had died after five days and the burning injuries were only 45% and therefore, these injuries were not sufficient to cause the death of Yamunabai. Therefore, he submitted that the offence can not be under 302 of the Indian Penal Code. He submitted that in case of such

death, there may be so many contributing factors. We do not accept said submissions because there is positive evidence of P.W.8-Doctor Pradip Chhanchure who opined that the injuries were sufficient to cause death of the person in an ordinary course. Therefore, we record our finding concurring with the finding given by the Trial Court that the death of Yamunabai was homicidal and it was caused by the accused/Appellant by pouring kerosene on her person and setting her on fire by throwing burning matchstick.

11. It is pertinent to note that all this evidence taken together, consistently and beyond reasonable doubt establish that the death of the deceased was caused due to the burn injuries which were caused as a result of pouring kerosene by the accused on the person of the deceased and thereafter, setting her on fire by throwing burning match stick. P.W.3 is neighbour of the deceased. After hearing noise, she came out of the house and at that time, she had seen the accused coming out of the house after opening the door. Thus, the testimony of the deceased is also

corroboarated by the independent witness, that immediately after setting the deceased on fire, the accused ran away from the said place.

12. In the result, we find no merit in the appeal and it is hereby dismissed.

**(S.R.SATHE, J.)** **(S.B.MHASE, J.)**